

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 03-1014

JC

EDWARD ATENCIO,

Defendant.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER comes before the Court on Defendant Edward Atencio's Motion for New Trial and Memorandum in Support, filed July 7, 2004 (*Doc. 105*). The Court, having considered the motion, the relevant authority, and being otherwise fully advised, finds the motion not well-taken and it is, therefore, denied.

Federal Rule of Criminal Procedure 33 authorizes a district court to grant a new trial if required in the interests of justice. *United States v. Quintanilla*, 193 F.3d 1139 (10th Cir. 1999). A Motion for a new trial is generally regarded with disfavor and should only be granted with great caution. *Id.*

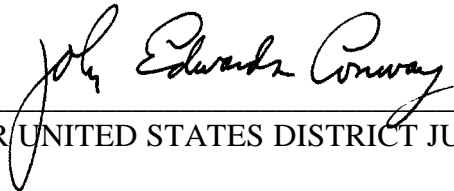
Defendant Edward Atencio contends that justice requires that he be granted a new trial, for he was charged by indictment in the conjunctive but the jury was instructed in the disjunctive and received a verdict form drafted in the disjunctive. Because the Court addressed this argument in open Court both before and after instructing the jury, and it is well-settled that where, as here, a statute may be violated by multiple means, the government need only prove Defendant's guilt in the

disjunctive<sup>1</sup>, the Court denies Defendant's motion on these grounds.

WHEREFORE,

**IT IS ORDERED** that Defendant Edward Atencio's Motion for New Trial and Memorandum in Support, filed July 7, 2004 (*Doc. 105*) is DENIED.

Dated August 10, 2004.

  
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SENIOR UNITED STATES DISTRICT JUDGE

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<sup>1</sup>See, e.g., *United States v. Powell*, 226 F.3d 1181, 1192 (10th Cir. 2000).